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TECHNOLOGY PROPERTIES LIMITED and
8 ALLIACENSE LIMITED
9 (In Case Nos. 08-00877 JF; 08-00882 JF; 08-00884
JF; 08-05398 JF; & C10-00816 EDL)

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 ACER, INC., ACER AMERICA CORP., and
14 GATEWAY, INC.,

15 Plaintiffs,

16 vs.

17 TECHNOLOGY PROPERTIES LIMITED,
18 PATRIOT SCIENTIFIC CORPORATION,
and ALLIACENSE LIMITED,

19 Defendants.

20
21
22 AND RELATED COUNTER-CLAIMS

Case No. C 08 00877 JF

**JOINT CIVIL L.R. 3-12
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED AND
REQUESTING ENTRY OF CASE
SCHEDULE**

(Jointly Filed By Sirius XM Radio, Inc., plaintiff in Case No. C10-00816 EDL, and Technology Properties Limited, Patriot Scientific Corp., and Alliacense Limited, Defendants in Case Nos. 08-00877 JF; 08-00882 JF; 08-00884 JF; 08-05398 JF; & C10-00816 EDL)

23 Pursuant to Civil Local Rule 3-12(b), Sirius XM Radio, Inc. (“Sirius XM”) and
24 Technology Properties Limited (“TPL”), Patriot Scientific Corporation (“Patriot”) and Alliacense
25 Limited (“Alliacense”) (TPL, Patriot, and Alliacense collectively referred to herein as the “TPL
26 Defendants”), jointly submit this Administrative Motion requesting that the fifth case listed below
27 (*Sirius XM Radio v. Technology Properties Limited et al.*) be related to the first four cases listed
28

1 below, all of which are or were pending in this district and had been previously related by this
 2 Court, and in all of which the TPL Defendants are parties:

3 (1) *Acer, Inc., Acer America Corp. and Gateway, Inc. v. Technology Properties Ltd.,*
 4 *Patriot Scientific Corp. and Alliacense Ltd.*, Case No. 08-00877 JF (N.D. Cal., filed on February
 5 8, 2008);

6 (2) *HTC Corporation and HTC America, Inc. v. Technology Properties Ltd., Patriot*
 7 *Scientific Corp. and Alliacense Ltd.*, Case No. 08-00882 JF (N.D. Cal., filed on February 8,
 8 2008);

9 (3) *ASUSTeK Computer, Inc. and ASUS Computer Int'l v. Technology Properties Ltd.,*
 10 *Patriot Scientific Corp., MCM Portfolio LLC and Alliacense Ltd.*, Case No. 08-00884 JF (N.D.
 11 Cal., filed on February 8, 2008);

12 (4) *Barco N.V. v. Technology Properties Ltd., Patriot Scientific Corp. and Alliacense Ltd.*,
 13 Case No. 08-05398 JF (N.D. Cal., filed on December 1, 2008); and

14 (5) *Sirius XM Radio, Inc. v. Technology Properties Ltd., Patriot Scientific Corp. and*
 15 *Alliacense Ltd.*, Case No. C10-00816 EDL (N.D. Cal., filed in S.D.N.Y. on April 24, 2009 and
 16 filed in the N.D. Cal. on February 26, 2010 after transfer).

17 **I. THE SIRIUS XM CASE SHOULD BE RELATED.**

18 In the Acer/Gateway Action, (number (1) above), Acer filed a motion to have its case
 19 considered to be related to the HTC and ASUSTeK cases (numbers (2) and (3) respectively).
 20 This Court granted that motion in a written Order dated April 29, 2008. Or. Granting Pl.'s Mot.
 21 To Consider Whether Cases Should be Related (April 29, 2008) [Docket No. 22]. Pursuant to
 22 that Order, the first three cases were assigned to Judge Fogel. The third action mentioned above,
 23 brought by ASUSTeK, has settled and is no longer pending. In the fourth action, Plaintiff Barco,
 24 N.V. brought an Administrative Motion filed to relate its case to the first three cases. On
 25 December 17, 2008, this Court granted Barco's request and related that action to the *Acer*, *HTC*,
 26 and *Asustek* actions.

27 The *Sirius XM Radio, Inc. v. Technology Properties Limited et al.* action was filed in the
 28 Southern District of New York on April 24, 2009. The TPL Defendants moved to dismiss the

1 action for improper venue, or in the alternative, to transfer the action to the Northern District of
 2 California. Judge Buchwald of the Southern District of New York granted the motion to transfer
 3 venue pursuant to 28 U.S.C. §1404 on February 17, 2010, and the *Sirius* action was transferred to
 4 the Northern District of California. A true and correct copy of Judge Buchwald's Order is
 5 attached hereto as Exhibit A.

6 Local Rule 3-12 provides that an action is related to another action pending in this district
 7 when "(1) [t]he actions concern substantially the same parties, property, transaction or event; and
 8 (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or
 9 conflicting results if the cases are conducted before different Judges."

10 Both of these prongs are met here. The TPL Defendants are parties to all of the actions.
 11 The *Acer* and *HTC* actions share four of the same patents-in-suit (the '148, '749, '336, and '890
 12 patents from the Moore microprocessor patent portfolio ["MMP"]) as the *Sirius XM* case.
 13 Similarly, the *Barco* action shares three of the same patents-in-suit, ('336, '749, and '890 patents)
 14 as the *Sirius XM* case. All of the pending actions seek a declaratory judgment of non-
 15 infringement and invalidity of the TPL Defendants' patents. Because of the overlapping parties,
 16 property, and issues common to all of the actions, judicial economy and efficiency would be
 17 achieved by having a single judge hear and decide claim construction and related issues.

18 Because the recently filed action brought by Sirius XM and the previously related actions
 19 satisfy both prongs of Local Rule 3-12(a), the TPL Defendants and Sirius XM¹ respectfully
 20 request that the *Sirius XM* action be administratively related to the pending *Acer*, *HTC*, and *Barco*
 21 actions and assigned to the Honorable Jeremy Fogel pursuant to Local Rule 3-12(f).

22 **II. SIRIUS XM AND THE TPL DEFENDANTS PROPOSE THE FOLLOWING CASE**
 23 **SCHEDULE IN THE EVENT THE CASES ARE DEEMED RELATED AND**
 24 **ASSIGNED TO JUDGE FOGEL.**

25 As mentioned above, the *Acer*, *HTC*, *Barco*, and *Sirius XM* actions all involve at least
 26 three of the same patents-in-suit from TPL's MMP portfolio. To permit Sirius XM and the TPL

27 ¹ Sirius XM's joinder in this request is respectfully contingent upon the Court's modification of
 28 the case schedule in the previously pending related actions to allow at least as much additional
 time for Sirius XM to prepare its case as is afforded it in the Schedule proposed in Section II of
 this Motion.

1 Defendants an opportunity to prepare and advance the MMP portion of the case to the same stage
 2 as the other three pending suits, Sirius XM and the TPL Defendants have agreed to a proposed
 3 schedule as set forth in the table below, which follows the sequence of events set forth in the
 4 February 22, 2010 Order Following Case Management Conference in Case Nos. 08-00877 JF; 08-
 5 00882 JF; and 08-05398 JF, with the dates moved back by an average of 3-4 weeks for the
 6 disclosures under Patent Local Rules 3-1, 3-2, 4-1, and 4-2.

7 The parties to the *Sirius XM* matter have met and conferred with the parties in the *Acer*,
 8 *HTC* and *Barco* actions. The parties in the *Acer*, *HTC* and *Barco* actions have agreed to file
 9 stipulations and proposed orders in their respective actions continuing the existing dates in their
 10 respective scheduling orders to match the MMP dates set forth below. The stipulations that
 11 would be filed are attached as Exhibit A.

12 In addition, the *Sirius XM* action also involves three additional patents ('853, '212, and
 13 '949 patents) from a second TPL patent portfolio known as Fast Logic. Patents from the Fast
 14 Logic portfolio were initially asserted in the *ASUSTeK* action, which has settled. The Fast Logic
 15 patents are not involved in the *Acer*, *HTC*, and *Barco* actions. To minimize the burden upon the
 16 Court at claim construction, Sirius XM and the TPL Defendants propose that the Fast Logic
 17 patents be phased from the MMP patents such that all the patent local rule disclosures for the Fast
 18 Logic patents occur sixty days after the corresponding dates in the MMP schedule.

19 Sirius XM's and the TPL Defendants' proposed schedule is set forth below in the
 20 following chart, which shows the existing schedule for various events, alongside Sirius XM's and
 21 the TPL Defendants' proposed schedule:

EVENT	CURRENT MMP SCHEDULE	PROPOSED MMP SCHEDULE	FAST LOGIC PATENTS PROPOSED SCHEDULE
Disclosure of Asserted Claims and Infringement Contentions and Related Documents	April 19, 2010	April 30, 2010	June 30, 2010
Invalidity Contentions and Related Documents	June 3, 2010	June 30, 2010	August 30, 2010

1	Proposed Terms and Claim Elements for Construction	June 25, 2010	July 23, 2010	September 23, 2010
2	Preliminary Claim Constructions and Extrinsic Evidence	June 25, 2010	August 30, 2010	November 1, 2010
3	Last day to file joint claim construction and pre-hearing statement	July 16, 2010	September 21, 2010	November 19, 2010
4	Claim construction discovery cut-off	August 13, 2010	October 19, 2010	December 17, 2010
5	Defendants' opening claim construction brief	August 27, 2010	November 2, 2010	January 14, 2011
6	Plaintiffs' responsive claim construction brief	September 10, 2010	November 30, 2010	February 14, 2011
7	Defendants' reply claim construction brief	September 17, 2010	December 14, 2010	February 28, 2011
8	Patent Technology Tutorial*	*If requested by the court Approximately 20 days after reply claim construction brief.		
9	Claim construction hearing	To be determined		
10	Status conference	Three weeks after the claim construction hearing		

For the reasons set forth above, Sirius XM and the TPL Defendants respectfully request that the *Sirius XM Radio v. Technologies Properties Ltd.* action, Case No. C10-00816 EDL, be related to *Acer, Inc., v. Technology Properties Ltd.*, Case No. 08-00877 JF; *HTC Corporation v. Technology Properties Ltd.*, Case No. 08-00882 JF and *Barco N.V. v. Technology Properties Ltd.*, Case No. 08-05398 JF, and that the schedule set forth above be adopted in the case, with respect to Sirius XM and the TPL Defendants, if and when it is related.

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1 Respectfully submitted:

2 Dated: April 30, 2010

FARELLA BRAUN & MARTEL LLP

4 By: /s/ John L. Cooper
5 John L. Cooper

6 Attorneys for Defendants
7 TECHNOLOGY PROPERTIES LIMITED and
8 ALLIACENSE LIMITED

9 Dated: April 30, 2010

KIRBY NOONAN LANCE & HOGE, LLP

10 By: /s/ Charles T. Hoge
11 Charles T. Hoge

12 Attorneys for Defendant
13 PATRIOT SCIENTIFIC CORPORATION

14 Dated: April 30, 2010

CARROLL BURDICK &
15 MCDONOUGH LLP

16 By: /s/ Eric J. Knapp
17 Eric J. Knapp

18 Attorneys for Plaintiff
19 SIRIUS XM RADIO, INC.

IT IS SO ORDERED:

Dated: 5/7/10

The Honorable Jeremy Fogel
United States District Judge